

JUDY FLEMING

IBLA 84-151

Decided June 12, 1984

Appeal from a decision of the Colorado State Office, Bureau of Land Management, dismissing protest against issuance of oil and gas lease C-36581.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Filing

A first-drawn oil and gas lease application, Form 3112-6a, is properly rejected where there is no proper Form 3112-6 on file with the Bureau of Land Management at the time of the drawing.

2. Oil and Gas Leases: Applications: Generally -- Rules of Practice:
Appeals: Effect of

The filing of an appeal from rejection of a lease offer or application preserves the viability of the offer or application during the pendency of the appeal. Thus, where it is shown that the lease improperly issued to another party, the lease is properly canceled and may be awarded to the appellant.

APPEARANCES: J. Scott Burnworth, Esq., Casper, Wyoming, for Anne M. Stroock; Judy Fleming, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Judy Fleming appeals from the October 11, 1983, decision of the Colorado State Office, Bureau of Land Management (BLM), which dismissed her protest against issuance of oil and gas lease, C-36581, to Anne Marie Stroock. 1/

1/ Fleming filed her "protest" on Aug. 16, 1983. A protest is an objection "to any action proposed to be taken." 43 CFR 4.450-2. Since, at the time, a lease had already issued to Stroock, a protest was not proper. Fleming, however, did have standing to appeal from the rejection of her application. Thus, while styled a "protest," BLM should have treated the Fleming "protest" as an appeal. Patricia C. Alker, 79 IBLA 123 (1984); Goldie Skodras, 72 IBLA 120 (1983).

Both Fleming and Stroock had filed applications with BLM for parcel CO-227 in the September 1982 simultaneous filing period. Stroock was selected with first priority; Fleming was accorded second priority. On June 30, 1983, a lease was issued to Stroock, effective July 1, 1983.

On August 16, 1983, Fleming filed a protest with BLM in which she stated:

Anne Marie Stroock failed to file Part A (Form 3112-6) prior to or at the same time she filed Part B (Form 3112-6a) for the September 1982 filing period. Under PART A INSTRUCTIONS and PART B INSTRUCTIONS is the statement "In order to participate in the automated SOG leasing program, both Part A and Part B of the Automated Simultaneous Oil and Gas Lease Application must be filed with the BLM." Since Part A was not timely filed by that applicant she should not be entitled to participate in that particular drawing and the lease issued to her should be cancelled and issued to me, the first qualified applicant. 2/

On October 11, 1983, BLM issued a decision which denied Fleming's protest to the issuance of the oil and gas lease. In the decision, BLM noted that its authorized officers must make determinations as to the acceptability of applications based on criteria found in the BLM manual and in instruction memoranda. For this proposition BLM cited 46 FR 55783 (Nov. 12, 1981) and quoted the following from Instruction Memorandum (IM) No. 82-193: "No Part B will be accepted unless (1) it is accompanied by Part A or (2) it has a correctly completed (darkened circles) social security number, employer identification number, or BLM applicant number."

As to Stroock's application, the BLM decision noted that "[a]lthough a Part A did not accompany the Part B, the subject application did have a correctly completed social security number, therefore, the application * * * was considered acceptable by this office."

On December 12, 1983, Anne M. Stroock filed a "Statement Of An Adverse Party" in which she states that the BLM decision is based upon proper authority and is in keeping with the spirit of the statutes and regulations concerning simultaneous filings for Federal oil and gas leases; that Fleming has failed in her burden to demonstrate by competent evidence that 46 FR 55783 and IM No. 82-193 are not the proper authority upon which BLM could rely; that Fleming has failed in her burden to demonstrate by competent evidence

2/ By memorandum dated Oct. 27, 1982, the Simultaneous Unit informed the oil and gas adjudication staff that Stroock had no Part A on file. In response to a Sept. 8, 1983, inquiry from the State Director of the Colorado State Office of BLM whether "there is a possibility that a Part A was filed by the applicant and for some reason not processed," the Wyoming State Office Director responded on Sept. 13, 1983: "We have reviewed our records for the September 1982 drawing and can find no evidence that a Part A form was submitted for that filing period for Ann [sic] M. Stroock. Our data base shows that a Part A form was filed for Ms. Stroock in the March 1983 filing period."

that the lease was based on an application which was improperly issued or in contravention of any statute or regulation; and that BLM had the discretionary power under 43 CFR 3102.5 to ascertain additional information as to the qualifications of Anne M. Stroock to determine whether her application was acceptable. Stroock concludes that BLM, choosing to rely on information in the Part B portion of her application, was well within its authorized power to so act.

In a "Reply to Statement of Adverse Party" filed on December 27, 1983, Judy Fleming contends that the protested lease was issued contrary to the statute, 30 U.S.C. § 226(c) (1976), the regulations, 43 CFR 3112.2-1(a) and (g), the BLM procedure as set out in IM No. 82-193 and Board decisions such as T & T Development Co., 77 IBLA 54 (1983). In addition she argues that 43 CFR 3102.5 is designed to authorize BLM to request further information concerning qualifications and not to waive the requirement that a properly completed application be filed in accordance with 43 CFR 3112.2-1.

IM No. 82-193 was issued on January 8, 1982. As originally issued, it reads as follows:

Beginning with the January 1982 simultaneous oil and gas filing period, the following criteria will be used only by the Wyoming State Office to determine the acceptability of applications submitted on the new automated form. All other State offices will use the same criteria upon implementation of the automated form. 3/

Automated Simultaneous Oil and Gas Lease Application: Part A (Bureau of Land Management Form 3112-6)

The following items must be completed on Part A:

ITEM	REQUIREMENT TO COMPLETE
Darken circles corresponding to last name and initials or organization name	mandatory
Darken circles corresponding to city	mandatory
Darken circles corresponding to social security number or employer identification number or leave blank as a request for a BLM applicant number	mandatory

3/ Effective May 1, 1982, the automated processing of simultaneous oil and gas lease applications was extended to include applications filed for parcels located in Colorado. 47 FR 14487-89 (Apr. 5, 1982).

Automated Simultaneous Oil and Gas Lease Application: Part B (Bureau of Land Management Form 3122-6(a)[sic])

The following items must be completed on Part B:

ITEM	REQUIREMENT TO COMPLETE
Darken circle(s) corresponding to selected parcels	mandatory
Darken circle corresponding to parcel prefix	mandatory
Darken circles corresponding to social security number, employer identification number or BLM applicant number	completion is <u>not</u> mandatory when Part B is accompanied by Part A, indicating a BLM applicant number is to be assigned; completion is mandatory when Part B is filed unaccompanied by Part A.
Signature and date	mandatory [4/]

In addition, the following special notes apply to the determination of acceptability:

No Part B will be accepted unless 1) it is accompanied by Part A or 2) it has a correctly completed (darkened circles) social security number, employer identification number, or BLM applicant number.

The same social security number, employer identification number, or BLM applicant number must be used on each submission.

The amount of money submitted with Part B must equal the number of valid parcels marked.

As each State office implements the Automated Form, a statement is to be published in the Notice of Lands Available for Oil and Gas Filings indicating that the Bureau has developed such criteria to determine acceptability and are available for review upon request.

^{4/} Although the regulations are clear and require that an application must be signed and dated (43 CFR 3112.2-1(c)), the Board has noted that the U.S. Court of Appeals for the Tenth Circuit's decision in Conway v. Watt, 717 F.2d 512 (1983), prohibits rejection of an application for an undated signature. The Conway court held that such an omission was a "nonsubstantive" error and served as an "inappropriate" ground for finding a simultaneous application defective. Shaw Resources, Inc., 79 IBLA 153, 178, 91 I.D. 122, 136 (1984).

We think a reading of the instruction memorandum in its entirety clearly indicates that an applicant's Part A must be filed before or with the filing of a Part B. This is confirmed by a reading of the instructions on Part B itself: "In order to participate in the automated SOG leasing program, both Part A and Part B of the Automated Simultaneous Oil and Gas Lease Application must be filed with BLM. * * * Submit Part B only if Part A is already on file with BLM or if Part A is attached." If Part A were not required either before or with Part B, the applicant's Part B could not be automatically processed. As we explained in Shaw Resources, Inc., supra, any deficiency which prevents the automatic processing of an application, that is, prohibits the computer from fully completing the automatic program, renders an application unacceptable. Id. at 174-76, 91 I.D. at 134-35. Obviously, if there is no Part A on file there is nothing against which the information on the Part B application form can be automatically read, and, therefore, the application must be viewed as unacceptable. James R. Taylor, 80 IBLA 157 (1984).

[2] A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant, and cancellation is mandatory where an oil and gas lease is issued to a party other than the first-qualified applicant in violation of a statute or regulation of the Department. 30 U.S.C. § 226(c) (1982); Bernard Kosik, 70 IBLA 373 (1983). By appealing the rejection of her application by protest and appeal of denial of the protest, Fleming's application remains viable, and since Stroock's application was unacceptable, and therefore defective, the lease issued to Stroock should be canceled and, all else being regular with Fleming's application, should be issued to Fleming. Patricia C. Alker, 79 IBLA 123, 126 (1984). Accordingly, BLM should consider the merits of Fleming's application and, if appropriate, issue the lease to her. 5/ It should also refund to Stroock all filing fees save a \$75 processing fee. Carey D. McDaniel, 80 IBLA 393 (1984); Shaw Resources, Inc., supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded for action consistent with this opinion.

Will A. Irwin
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

5/ The third-priority applicant has not appealed the rejection of its application. Should, therefore, Fleming's application also be found to be in some way defective, the parcel would be subject to a new simultaneous listing. Goldie Skodras, supra.

